IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. No. 1576 of 2002

Date of Decision: 30.08.2007

Gujarat Ambuja Cements Ltd. and others

...Petitioners

Versus

The State of Haryana

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sandeep Goyal, Advocate,
Mr. Avneesh Jhingan, Advocate,
for the petitioners.

Ms. Ritu Bahri, DAG, Haryana,
for the respondent.

JUDGMENT

M.M. KUMAR, J.

This order shall dispose of seven writ petitions, which are fully detailed in the footnote, as common issues have been raised in these petitions. The prayer made is to declare Section 6A introduced in the Haryana General Sales Tax Act, 1973 (for brevity, 'the Act') to be ultra vires of the Constitution and beyond the

legislative competence of the State Legislature. A further prayer has been made for issuance of direction to the State to levy and collect sales tax only on the actual sale price bargained between the petitioners and their customers.

Brief facts may first be noticed which are being taken from C.W.P. No. 1576 of 2003. The petitioner companies are engaged in the business of manufacturing and selling cement throughout the country including the State of Haryana where they have their sales offices. All of them are duly registered with the Sales Tax Department, Haryana under the provisions of the Haryana Act and also under the Central Sales Tax Act, 1956, in various districts. The respondent State has enacted the Act. The Act was amended by the Haryana General Sales Tax (Amendment) Act, 2002 (Haryana Act No. 21 of 2002). By amendment Section 6A was incorporated which postulate levy of sales tax on any transaction of sale of goods indicated in the Schedule on the Maximum Retail Price (for short 'MRP') of the goods as against the actual price of consideration which is paid or becomes payable by the buyer to seller on such sales as have taken place. The MRP is required to be declared on the package as per the provisions of the Standards of Weights and Measures Act, 1976 or the Rules framed thereunder or any other law for the time being in force. Such sale price is chargeable only at the last point of sale by the retailer.

Mr. Sandeep Goyal and Mr. Avneesh Jhingan, learned counsel for the petitioners have argued that Section 6A of the Act is pari-materia to Section 4A of the Rajasthan Sales Tax Act, 1994 (for brevity, 'the Rajasthan Act'). The validity of Section 4A of Rajasthan

Act was challenged and a Division Bench of Rajasthan High Court in the case of **Rajasthan Chemists Association v. State of Rajasthan, (2006) 147 STC 476 (Raj)**, has held that tax on first point sale cannot be charged with reference to published MRP when the goods by a manufacturer/wholesaler/distributor are sold to retailer because the MRP is neither charged or chargeable by the wholesaler from the retailer. According to the learned counsel the Division Bench judgment of Rajasthan High Court was challenged before Hon'ble the Supreme Court and the view taken by the Rajasthan High Court was upheld in the case of **State of Rajasthan v. Rajasthan Chemists Association, (2006) 147 STC 542 (SC)**.

Ms. Ritu Bahri, learned State counsel has made unsuccessful attempts to distinguish Section 6A of the Act from that of Section 4A of the Rajasthan Act. She has pointed out few differences but has largely remained unable to persuade us that there is any significant difference between two provisions.

After hearing learned counsel for the parties, perusing the provisions of Section 6A of the Act along with Section 4A of the Rajasthan Act and with the able assistance of learned counsel for the parties, we are of the view that both the provisions are pari-materia in material particulars and, therefore, the judgment of Hon'ble the Supreme Court in the case of Rajasthan Chemists Association (supra) would be fully applicable. It is considered appropriate to *juxta pose* Section 6A of the Act and Section 4A of the Rajasthan Act, which are as under:-

Section 6A of the Act	**Sector 4A of the Rajasthan Act**

"6A. Levy of tax on retail price. (1) Notwithstanding anything contained in any other provision of this Act or the rules made thereunder, tax on sale of goods specified in column 2 of Schedule F shall be levied and collected on the retail sale price of such goods abated by the rate specified in column 3 at the tax rate specified in column 4 when such goods are sold for the first time in the State by a dealer liable to pay tax under this Act. Provided that no sale of such goods ata subsequent stage shall be exempted from tax under this Act unless the dealer effecting the sale at such subsequent stage furnishes to the assessing authority in the prescribed form and manner a true and correct certificate duly filled in and signed by the registered dealer from whom the goods are purchased to the effect that the tax on such goods has been paid to the State at the first stage.	"4A. Levy of tax on retail sale price- (1) notwithstanding anything contained in any other provision of this Act or the rules made thereunder, tax on sale of such goods, as may be specified by the State Government by notification in the official Gazette, shall be levied and collected on the retail sale price of such goods abated by the rate specified in the said notification.

(2) The goods specified in Schedule F shall be those in relation to which it is required, under the provisions of the Standards of Weight and Measures Act, 1976 (60 of 196) or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods.	(2) The goods to be specified under sub-section (1) shall be those in relation to which it is required under the provisions of the Standards of Weights and Measures Act, 1976 or the rules made thereunder or under any other law for the time being in force, to declare on the package thereof the retail sale price of such goods.
(3) The Government may, for the purpose of fixing the rate of abatement under sub-section (1), take into account the amount of sales tax and other local taxes, if any, payable on such goods."	(3) The State Government may, for the purpose of fixing the rate of abatement under sub-section (1) take into account the amount of sales tax and other local taxes, if any, payable on such goods. Explanation – (i) Where on the package of any goods different retail sale prices are declared with reference to different areas, the retail sale price declared with reference to the area with the state in which it is sold shall be deemed to be the retail sale price for the purposes of this section.

> (ii) Where on the package of any goods different retail sale prices are declared with reference to different areas and none of the areas falls within the State, the maximum of such retail sale prices shall be deemed to be the retail price for the purposes of this section."

A bare perusal of both Sections in juxta position would show that in substance and in material particulars there is no significant difference which may warrant us to deviate from the view taken by Hon'ble the Supreme Court in the case of Rajasthan Chemists Association (supra). Sub-section (1) in both the provisions start with non obstante clause and the only difference on further reading found is that in Section 6A of the Act, the goods are specified in column 2 of Schedule F whereas in Section 4A of Rajasthan Act, the goods are required to be specified by the State Government by notification in the official Gazette, which is insignificant for our purposes. Sub-sections (2) and (3) of both Sections and the judgment of Hon'ble the Supreme Court in Rajasthan Chemists Association case (supra) is fully applicable to the controversy raised in these petitions.

In view of the above, the writ petitions are disposed of in terms of the judgment of Hon'ble the Supreme Court in Rajasthan Chemists Association case (supra) and we hold that tax on first point

sale of goods by manufacturer/wholesaler/distributor to retailer is not chargeable by the wholesaler from the retailer where MRP is published on package. The measures of rate of tax to be applied cannot be with reference to such published MRP, which is neither charged nor chargeable by the wholesaler from the retailer whether the tax charged on sales or on purchase by the parties to sale under Section 6A of the Act.

For the reasons recorded above, these petitions[1] are allowed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

August 30, 2007

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FIT FOR INDEXING

[1] 1. Beopar Mandal (Regd.) and another v. State of Haryana and another (C.W.P. No. 3 of 2003);

2. M/s Devyani Beverages Ltd. and another v. The State of Haryana and others (C.W.P. No. 1125 of 2003);

3. Gujarat Ambuja Cements Ltd. and others v. The State of Haryana (C.W.P. No. 1526 of 2003);

4. Indian Soaps & Toiletries Makers' v. State of Haryana and another (C.W.P. 2821 of 2003);

5. Indian Soft Drinks Manufacturers Association v. State of Haryana and others (C.W.P. No. 2822 of 2003);

6. Godrej Sara Lee Ltd v. The State of Haryana and others (C.W.P. No. 4928 of 2003); and

7. M/s Godrej Consumer Products Limited v. State of Haryana and another (C.W.P. No. 6205 of 2003).